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Board of Commissioners of Public Utilities
Prince Charles Building
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St. John's, NL A1A 5B2

Attention: Colleen Jones
Assistant Board Secretary

Re: Newfoundland and Labrador Hydro – 2025 Capital Budget Supplemental Application – Application for the Purchase and Installation of Bay d’Espoir Unit 8 and Avalon Combustion Turbine – Bates White Report – Phase Two – Confidential Information – Reply

As noted in the correspondence from the Board of Commissioners of Public Utilities (“Board”) on February 27, 2026, the Board had previously provided Newfoundland and Labrador Hydro (“Hydro”) with a version of the Bates White Economic Consulting, LLC (“Bates White”) Expert Report – Phase Two (“Bates White Report”) indicating the redactions the Board proposed to protect confidential and commercially sensitive information. The Board requested that Hydro review the Board’s proposed redactions and advise if it was in agreement with them. Hydro reviewed the redactions, which were very limited; the redactions did not include the information that Hydro has consistently advised is commercially sensitive. Hydro’s requested redactions, provided to the Board on February 26, 2026, are consistent with the types and categories of redactions that have been previously applied in the application for the purchase and installation of Bay d’Espoir Unit 8 and Avalon Combustion Turbine (“2025 Build Application”), 2026 Capital Budget Application (“CBA”), and the application for the capital expenditures required for the life extension of Unit 7 of the Bay d’Espoir Hydroelectric Generating Facility.¹

In its February 27, 2026 correspondence, the Board noted that Hydro’s comments provided along with the proposed redactions were general and not particularized and do not confirm that the information is otherwise publicly unavailable. The Board stated that Hydro’s general explanations did not address each claim, setting out how the release of the information would cause undue financial loss or gain, harm its competitive or negotiating position, or interfere with contractual obligations. Hydro’s comments on February 26, 2026, were intended to be general; they were a summary of the detailed submissions Hydro had previously made regarding substantively the same information or, in certain cases, the same type of information, which submissions had been filed on the record of the above-noted application and on the record of Hydro’s 2026 CBA.²

¹ As noted later in this correspondence, there are a small number of redactions that Hydro has reconsidered. Some of those redactions were not released for review prior to sending the proposed redactions to the Board due to the urgency of providing the proposed redactions.

² Please refer to “Application for Capital Expenditures for the Purchase and Installation of Bay d’Espoir Unit 8 and Avalon Combustion Turbine – Confidential Information Inquiry,” Newfoundland and Labrador Hydro, May 9, 2025; “Newfoundland and Labrador Hydro – 2025 Capital Budget Supplemental Application – Application for the Purchase and Installation of Bay d’Espoir Unit 8 and Avalon Combustion Turbine – Confidential Information Inquiry – Hydro’s Reply,” Newfoundland and Labrador Hydro, November 27, 2025; and “2026 Capital Budget Application – Confidential Information – Hydro’s Reply,” Newfoundland and Labrador Hydro, December 11, 2025.

The Board noted in its February 27, 2026 correspondence that it does not accept Hydro's proposed redactions and, noting Hydro's request for further process, provided an opportunity for comments from the intervenors to the application and further comments from Hydro.

Party Comments

Newfoundland Power Inc. ("Newfoundland Power") and the Consumer Advocate both filed submissions regarding the issue.

Newfoundland Power referenced the Board's longstanding practice of placing all application-related documents on the public record unless a confidentiality claim is accepted and noted the absence of a formal confidentiality framework in Newfoundland and Labrador compared to other provinces. Newfoundland Power's submission proposes a balanced approach that protects information where disclosure might increase project costs, delay schedules, breach legal or contractual obligations, or heighten cybersecurity risk. Acknowledging the unusually large scale of the proposed capital projects, Newfoundland Power accepts that Hydro has legitimate confidentiality concerns but maintains that Hydro must clearly justify its redactions. Newfoundland Power recognized that the Board must determine what information should remain confidential while ensuring an appropriate level of transparency for major public utility projects.

The Consumer Advocate's submission emphasized the importance of openness and transparency in the review of Hydro's 2025 Build Application, particularly given the cost and long construction timelines of the Bay d'Espoir Unit 8 and Avalon Combustion Turbine projects. While acknowledging Hydro's need to protect genuinely commercially sensitive information—especially where disclosure could increase project costs or impact procurement—the Consumer Advocate's submission stressed that, as a general rule, expert reports and related materials should be publicly accessible. The Consumer Advocate submitted that the Board should carefully balance confidentiality against the significant public interest in full disclosure, while noting that ratepayers will ultimately bear the financial consequences of the proposed projects.

Hydro's Submissions

Hydro agrees with Newfoundland Power and the Consumer Advocate that confidentiality should be carefully and thoughtfully weighed against the necessity of public accessibility to detailed information regarding the operations of a monopolistic utility. The capital expenditures proposed by Hydro are significant, and both the costs and the projects themselves are impactful to the people of the province.

As Hydro noted in its comments filed on February 26, 2026, transparency helps regulators maintain public confidence, reinforce accountability in monopoly services, and support sound, evidence-based decisions. Hydro considers these requirements each and every time it reviews its evidence or other filings to determine if redactions are needed. Any time Hydro proposes a redaction, it is because the information is commercially sensitive and is likely to (i) cause undue financial loss or gain, (ii) harm Hydro's competitive or negotiating position, or (iii) interfere with contractual obligations. Failure to mitigate these risks would have a direct negative impact on the costs incurred on the project, and that would be harmful to Hydro's customers as it would increase the costs recovered from those customers and/or delay the work necessary to ensure customers had access to safe, reliable, least cost and environmentally responsible power.

Hydro's proposed redactions are narrow and targeted, partial redactions wherever possible to allow for a general understanding of the information being communicated, while redacting certain specifics that

are commercially sensitive. Hydro does not redact information when that information is already public.³ Hydro's redactions align with common practice across Canadian utility regulators, as Hydro has demonstrated in its previous filings, particularly the correspondence filed as part of Hydro's 2026 CBA.

The Board is provided with all information without any redactions. Additionally, intervenors retain full, unredacted access under executed non-disclosure agreements, ensuring complete testing of evidence while protecting the commercially sensitive information from the broader public dissemination that would present risks.

Transparency

Hydro's approach in the redactions to the Bates White Report achieves transparency by confirming that the substance of the analysis from Bates White, Consolidated Asset Management Services, LLC, and Gruner Stucky AG can remain public while redacting only discrete, sensitive commercial figures, granular risk metrics, and forward-looking schedule specifics that would transfer commercial leverage to contractors and bidders.

As the Board and all intervenors have access to unredacted materials, all of the information can be tested through any process the Board may put in place. With the limited and narrow redactions proposed by Hydro, the public can still understand what Hydro is asking for and why and the overall determinations of the Board's experts regarding Hydro's proposals. All the while, without compromising customers' interests by revealing the details that could be used to Hydro's and ratepayers' detriment.

Hydro respectfully submits that disclosure should not become an end in itself. Where information does not materially enhance public understanding of the Board's determinations but creates substantial and foreseeable risk of commercial harm, release of the information can impact costs without actual public benefit. For example, providing or enabling contractors to calculate package budgets, contingency allowances, or schedule float would have a detrimental impact on customers by providing contractors with stronger commercial leverage that would result in increased procurement costs. Those costs ultimately flow to customers. Narrow redactions prevent those harms while leaving intact the information necessary for the public to understand and follow any reasons issued by the Board for its decisions.

Categories of Redactions

Hydro's redactions are generally confined to the following categories:

- *Detailed cost elements and percentages* that reveal pricing structures or risk assessments (e.g., base cost for each project; subtotaling that enables back calculation of components).
- *Contingency and management reserve data*, including amounts, percentages, and Monte Carlo outputs, as well as characterizations that would reveal the magnitude of these reserves in context.
- *Contractor influencing risk content*, including quantified strategic risks, where public release would signal Hydro's valuation of specific vulnerabilities.
- *Forward-looking schedule dates and critical path indicators* that are not yet public, where disclosure could be leveraged in negotiations or claims.
- Third-party proprietary content and security-sensitive technical references.

³ If there is information that Hydro has proposed or requested to be redacted that is available publicly, Hydro is unaware of that availability.

Releasing the types of information listed above can reasonably be expected to cause harm, including but not limited to:

- *Bid Shaping and Price Signalling.* Detailed package budgets, contingency budgets and plans, and reserve magnitudes enable contractors to price to perceived budget leeway, undermining competition.
- *Claims Incentives.* Knowledge of contingency and management reserves (and how they were derived) can encourage opportunistic change request strategies and claims, increasing total installed cost.
- *Negotiating Position.* Public disclosure of cost structures, escalation assumptions, and risk quantification diminishes Hydro's leverage with contractors and suppliers on this and subsequent procurements.
- *Schedule Leverage.* Publishing future milestone dates, schedule float, or critical path details signals to contractors where delay pressure can extract concessions.
- *Third-Party Rights and Security.* Certain information is proprietary to contractors or may raise technical/security concerns.

These are not hypothetical concerns; they are significant, foreseeable issues and are the reasons Canadian regulators have allowed confidential treatment of similar categories, particularly when the parties can test the evidence under agreements to maintain the confidentiality of the sensitive information.

Board Specific Concerns

The Board stated that it did not accept that it is appropriate for Hydro to claim confidentiality with respect to the Board's expert consultant's comments, opinions, findings and conclusions unless they set out confidential information provided by Hydro. Hydro agrees that generally, the opinions and findings of the experts should be released. However, when those findings characterize a portion of Hydro's budget or schedule, for example, as being "too low," "too high," or "unreasonable," those characterizations would be of significant interest to bidders and contractors and would be akin to a direction to those parties about where to place pressure, push negotiations, or file claims. Hydro notes that those characterizations and thus the proposed redactions are very few in the report; however, Hydro feels they are warranted and requests that the Board consider Hydro's position and accept those redactions.

The Board noted other information for which they stated Hydro had not provided details as to how the release of the information would cause undue financial loss or gain, harm Hydro's competitive or negotiating position, or interfere with contractual obligations. This information is addressed below.

(i) Original combustion turbine package estimates and awarded contract amount.

At the time Hydro had proposed the redactions, the awarded contract amount had not yet been released publicly through the procurement process. That step has now been completed, and Hydro agrees that the awarded contract amount, the original package estimate, and the percentage difference should be released and not redacted.⁴

⁴ Hydro notes that this is low risk because of the number of procurement packages on the project. If this were the only or one of the only procurement packages making up the proposed cost of the project, Hydro would deem the information to be commercially sensitive, as it would allow contractors to calculate the remaining aspects of the cost estimate.

(ii) Subtotals for direct and indirect construction costs.

Subtotals, when combined with authorized totals, escalation/interest during construction assumptions, and public schedule staging, can allow contractors to determine redacted line items, allowing for extrapolation of package budgets and contingency levels. Releasing subtotals would give contractors clearer insight into Hydro's internal cost structure, revealing how much budget is allocated to labour, materials, and indirect support. Even without showing additional sensitive components, these subtotals narrow the range of uncertainty contractors typically face and allow them to infer where Hydro may have limited flexibility or higher internal exposure. This reduces competitive pressure by enabling contractors to tailor pricing toward perceived budget capacity, increasing bid amounts or change order leverage without delivering any corresponding public benefit. Where a subtotal contributes to this calculation ability, Hydro has proposed to withhold the subtotal and instead provide qualitative descriptions or broader ranges sufficient for public understanding without enabling reverse engineering.

(iii) Total for the range of estimated strategic risks.

Disclosing the total estimated value assigned to strategic risks signals the magnitude of Hydro's overall risk exposure, even if individual vulnerabilities remain undisclosed. A high or concentrated risk value can indicate where the project is most susceptible to delay or cost escalation, encouraging contractors to increase premiums, add contingencies of their own, or harden negotiation positions. This compromises Hydro's commercial position by revealing its internal assessment of project risk, allowing counterparties to price against Hydro's risk tolerance. A single total for overall strategic risks can still disclose Hydro's valuation of risk exposure and prompt parties to tailor bids or claims. Hydro maintains the confidentiality of the quantified risk totals and distributions but leaves certain narrative risk descriptions public. The intervenors have the ability to fully examine the unredacted risk analyses and challenge them through the regulatory process.

(iv) Contingency and management reserve amounts/percentages and changes.

These figures are especially sensitive because they signal Hydro's anticipated claim space and perceived uncertainty. Publishing contingency and management reserve levels, both amounts and percentages, gives bidders a direct view of Hydro's available financial buffer, undermining competitive tension by allowing contractors to price upwards. When contractors know how much margin Hydro has set aside, they can adjust bids upward, absorb that buffer through higher pricing, or exploit perceived flexibility in negotiating change orders. Public disclosure turns these risk management tools into market signals, increasing costs without improving transparency around project prudence or decision-making. Hydro preserves transparency by keeping the overall authorized budget, the amount the Board has been asked to approve, public and explaining the methodology for calculating contingency and reserve (e.g., risk-based estimating, Monte Carlo) without publishing the precise numbers. As above, the parties to the application, along with the Board, can fully test these figures and their calculations.

(v) Certain strategic risks but not others.

As noted above, Hydro considers each redaction on its own. Contractors and other counterparties may use revealed risks to strengthen their bargaining position or add risk premiums. Where a disclosure would reveal a specific vulnerability that can be priced or exploited (commercially or operationally), and where that information is not already publicly available, Hydro seeks limited redaction. However, where

the risk is commonplace or already obvious to the market, Hydro leaves it public. This approach narrows confidentiality to the minimum necessary to avoid harm.

(vi) Execution dates and schedule assessments.

Hydro proposes to release historical dates and to redact future dates, critical path indicators, and explicit schedule float. This allows for understanding by the public of the progress and sequence without providing tactical information that various parties could leverage in negotiations or claims. Publicly releasing detailed execution dates and schedules can raise costs and weaken procurement outcomes by revealing schedule pressures and critical-path constraints that contractors can price against. It signals where the utility lacks flexibility, reducing negotiating leverage and encouraging inflated change orders, all with no increased benefit to transparency about overall project objectives or prudence.

Redaction of Personal Information

Hydro's redactions of the authors of the Gruner report, as well as the names and positions of other contractors and Hydro employees, were done with the intention of protecting personal information. However, Hydro has completed an additional review of this information and how that information is considered through provincial privacy legislation and has determined that the information referenced in the Bates White Report can be released as it would not be considered an unreasonable invasion of a third party's personal privacy.⁵ Hydro will continue to consider the applicability of privacy legislation with respect to personal information in any future proposals for confidentiality.

Consistency with Regulatory Practice

Hydro's confidentiality approach reflects the practice among Canadian regulators to permit narrow redactions for commercially sensitive material, particularly where the information can be provided to the Board and parties (pursuant to confidentiality agreements or undertakings) to be tested. Regulators have repeatedly accepted confidentiality for various commercially sensitive materials such as engineering, procurement, and construction contract pricing, cost breakdowns, risk allocations, and schedule specifics where disclosure would prejudice a utility's negotiating position and risk increasing customer costs.⁶

Hydro's submission is also consistent with the approach taken in the Commission of Inquiry Respecting the Muskrat Falls Project, where transparency was balanced against harm to commercial interests and project execution risk. In his decision, the Honourable Richard D. LeBlanc, Commissioner, noted:

It is important to note that details related to estimates, costs and other issues involved in the Pennecon contract were not entered into public evidence because there is an ongoing arbitration between Nalcor and Astaldi. This information was disclosed to the Commission by way of confidential exhibits. After reviewing these, I am satisfied that the most recent Project capital cost estimate of \$10.1 billion includes sufficient amounts to cover the costs in the Pennecon contract, assuming that those costs do not increase.⁷

⁵ *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c A-1.2, s. 40.

⁶ Please refer to "2026 Capital Budget Application – Confidential Information – Hydro's Reply," Newfoundland and Labrador Hydro, December 11, 2025.

⁷ The Honourable Richard D. LeBlanc, Commissioner, "Muskrat Falls: A Misguided Project – Volume 3: Post-Sanction Events," Commission of Inquiry Respecting the Muskrat Falls Project, March 5, 2020, pp. 184–185, <https://www.muskratfallsinquiry.ca/files/Volume-3-Post-Sanction-Events-FINAL.pdf>.

Commissioner LeBlanc further stated, in Volume 4 of his decision:

As a result of the co-operation and efforts of the parties with standing, other witnesses and legal counsel, the Commission was able to obtain all the documents that were potentially relevant to our work. Using a practical approach, legal counsel were able to agree on necessary redactions prior to entering the documents as exhibits. Only a small number of documents became confidential exhibits, a designation that was necessary to protect commercially sensitive and privileged information. In preparing my Report, I have reviewed all exhibits, both public and confidential, and the testimony of all of the witnesses.⁸

Balance Favours Narrow Redactions

When considering the requests for confidentiality, as noted by Newfoundland Power and the Consumer Advocate, the Board must find the balance between openness and transparency and protection against the financial risks that could occur. If the information that Hydro has flagged as being commercially sensitive is released, Hydro submits that there is a credible, concrete risk of influencing higher procurement pricing, more aggressive claims behaviour, less competitive contractor participation, and weaker negotiating outcomes, all of which would increase costs that will ultimately be borne by customers.

Alternatively, if the limited and narrow redacted information is not released, there is no prejudice to procedural fairness or to the Board’s fact-finding because the Board has full access to the information, as do the intervenors, subject to their non-disclosure agreements. The public record remains comprehensive enough for the public to understand the particulars of the application and the Board’s reasons.

Hydro, therefore, respectfully asks the Board to accept the redactions to the Bates White Report as Hydro has proposed.

Should you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



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⁸ The Honourable Richard D. LeBlanc, Commissioner, “Muskrat Falls: A Misguided Project – Volume 4: Looking Forward,” Commission of Inquiry Respecting the Muskrat Falls Project, March 5, 2020, p. 91, <https://www.muskratfallsinquiry.ca/files/Volume-4-Looking-Forward-FINAL.pdf>.